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September 8, 2005

Mr. Scott York, Chairman
Loudoun County Board of Supervisors
One Harrison Street, SE
Fifth Floor
Leesburg, VA 20175

Re: Report of Zoning Ordinance Technical Review Committee ("ZORC") on
Suggested Revisions to Loudoun County Zoning Ordinance Implementing
"Option 1" in the AR-1 and AR-2 Zoning Districts

Dear Scott:

Transmitted herewith is the Report of the Zoning Ordinance Technical Review Committee ("ZORC") which addresses certain questions raised by the Board of Supervisors relative to AR-1 and AR-2 Zoning Districts, and which contains suggested revisions to the Zoning Ordinance which in our judgment would implement "Option 1" as directed by the Board of Supervisors on July 21, 2005.

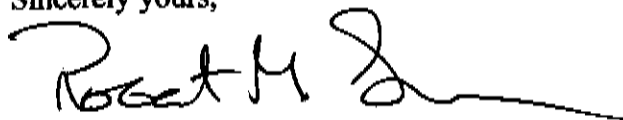
We request that you have a copy of this report forwarded to all Board members for their consideration. Mr. Michael Currie of the Zoning Office has an electronic soft copy of these documents.

We understand that Staff is also working on this effort and will be forwarding you suggested draft language in the near future, and we look forward to working the the Board, the staff, and other affected groups to bring this important work to conclusion.

Our Committee would be extremely remiss if we did not call the Board's attention to the extraordinary level of support we have received from Michael Currie of the Zoning Office, who has attended every meeting, displayed draft materials on the board for review by our Committee and the public, maintained the integrity of revisions to the zoning ordinance, and demonstrated an unsurpassed command of his laptop and the Microsoft Word software. We absolutely would not have been able to complete this task without him.

Please don't hesitate to contact us if you or any Board member has any questions,
or if we can be of further assistance.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Robert M. Gordon", with a long horizontal flourish extending to the right.

Robert M. Gordon, Chairman, ZORC

LOUDOUN COUNTY ZONING ORDINANCE REVIEW COMMITTEE
REPORT TO BOARD OF SUPERVISORS ON AR-1 AND AR-2 ZONING

September 8, 2005

The Loudoun County Zoning Ordinance Review Committee ("ZORC") was established by the Board of Supervisors in December, 2004, to conduct a technical review of the Loudoun County Zoning Ordinance and to (i) make revisions to the Zoning Ordinance required as a result of judicial decisions in litigation challenging certain provisions of the January 6, 2003 amendments to the Zoning Ordinance; (ii) review recommendations from staff for clarification and correction of the Zoning Ordinance based issues identified by staff over the course of several years of administration of the Zoning Ordinance; (iii) solicit and obtain public input, and (iv) recommend revisions to the Loudoun County Planning Commission and Board of Supervisors based on such review and deliberations. Pursuant to Board direction, the ZORC held a public input session on February 3, 2005, and solicited public input through February 28, 2005.

During the course of the ZORC review process, on March 3, 2005, the Supreme Court of Virginia, in Gas-Mart Corporation, et al. v. Board of Supervisors of Loudoun County, struck down the AR-1 and AR-2 provisions of the Zoning Ordinance. On June 21, 2005, during the Board's deliberations on potential zoning alternatives for areas previously zoned AR-1 or AR-2, the Board directed that the ZORC provide recommendations on the following topics:

1. The reasonable minimum lot size that could help retain a rural setting and encourage the use of traditional well and septic systems.
2. Recommendations on language that could be implemented to address concerns regarding issues arising from non-conforming lots or uses based on any action the Board may take.
3. Examine and make recommendations on language, logistics, implementation, etc. on the concept of tracking the number of lots a parent lot could produce based on its size and allow that lot to "spin off" child lots that cannot be subdivided one at a time instead of all at once. Examine this issue in terms of clustered lots as well.
4. Review the list of allowable by-right uses in the original AR-1 and AR-2 zoning districts, and make recommendations as to additions, deletions, or changes to any of these uses.
5. Examine whether rural economy lots could have easements placed on them that would either prohibit residential uses or allow them only as a secondary use for a property owner that is engaging in a rural economy/agriculture use. If residential uses are eased off the property, what is the feasibility.
6. Provide additional comments, if any, other than as listed above.

The Board of Supervisors subsequently, on July 19, 2005, gave further direction on zoning options for the areas formerly zoned AR-1 and AR-2, by directing that Loudoun

County staff prepare draft amendments to the Loudoun County Zoning Ordinance, and to such other ordinances or documents as may be necessary to implement "Option 1."

The ZORC met in public session on a regular basis from late July through August, and utilized public comment received prior to the Virginia Supreme Court decision where the comments related to AR-1 and AR-2 issues not rendered moot by the decision. In addition, we have worked closely with the Rural Economic Development Committee ("REDC") and the Loudoun Convention and Visitors Association ("LCVA") during our review of these issues. Based on this work, we submit this report and the attached materials for consideration by the Board of Supervisors. The following materials are attached hereto:

- Redlined version of Article 2-100, AR-1 District regulations.
- Redlined version of Article 2-200, AR-2 District regulations.
- Redlined version of Article 5-700, Optional Development types, showing suggested revisions for cluster development in the AR-1 and AR-2 zoning districts.
- Redlined version of Article 5-600 performance standards for various uses.
- Relined version of Section 5-500 Temporary Uses.
- Redlined version of Section 1-404 Boundary Line Adjustments.

Although these materials are somewhat voluminous, our committee concluded early on in our deliberations, that the most help that we could provide to the Board of Supervisors would be to provide a package that attempted to implement the "Option 1" approach chosen by the Board of Supervisors in a manner that we felt fit together and worked as a whole.

We note that although a proposed revised Floodplain Overlay District (Article 4-1500) is not included in the attached materials, our committee is considering that all gross land area located within a parcel of land, including major flood plain, will be counted in determining the density of development. Prior to January 6, 2003, density credit was not given for major floodplain, i.e., flood plain draining an area of greater than 640 acres. The January 2003 revisions, for the first time, gave density credit for major floodplain as a part of the RSCOD section of the ordinance, which superseded the former FOD district. The RSCOD sections of the ordinance were voided by judicial decision. In discussing this issue, the ZORC is considering recommending to the Board of Supervisors that major flood plain areas be counted for purposes of determining density of development, i.e., the number of lots that may be created from a parcel of land. Our current reasoning, as it applies to the rural (AR-1 and AR-2) areas of the County, is that unless major floodplain is counted for density purposes, landowners may not be able to determine without a costly flood plain study how many lots may be created, and the County's task of tracking spinoff and simple subdivisions would be greatly complicated. Proposed FOD district regulations will be forwarded with the balance of the ZORC's recommendations in the near future.

EXECUTIVE SUMMARY OF ATTACHED MATERIALS

The Board's Option 1 set densities for the AR-1 and AR-2 districts as follows, while directing that ZORC and staff establish a new "parent/child option" to allow subdivision of lots at smaller lot sizes than the base district density, and to allow for rezoning of parcels to achieve higher densities, with proffers and mandatory clustering. The guidance we received as to density was as follows:

Base Zoning	AR-1	AR-2
Base Density	1 Lot per 20 acres	1 Lot per 40 acres
Parent Child Option (Renamed Spinoff Lot Option in our materials)	1 Lot per 10 acres, requires minimum tract size of 20 acres.	1 Lot per 20 acres, requires minimum tract size of 40 acres.
Rezoning Option	1 Lot per 7.5 acres, requires minimum tract size of 15 acres	1 Lot per 15 acres, requires minimum tract size of 30 acres

In preparing the attached materials, the Committee has addressed the specific questions posed by the Board of Supervisors as follows:

1. Minimum Lot Size: We recommend a minimum lot size in both the AR-1 and AR-2 districts of two (2) acres for spinoff lots, with a requirement that the spinoff lot be served by on site well and septic. We recommend a minimum lot size in cluster subdivisions of 1 acre, with a requirement that (i) septic fields in cluster subdivisions must be located on the lot served or on land owned by a homeowners' association (HOA); (ii) up to 70% of the cluster lots may have their septic field on land owned by the HOA, meaning that 30% of the cluster lots must have their primary and reserve septic field on the lot.

Rationale: The spinoff lot process is intended to be a simple process which may be used by landowners one or more times to subdivide and convey a lot, utilizing the allowed spinoff density (for example, one lot per 10 acres in AR-1, as opposed to the base AR-1 density of one lot per 20 acres). For this simple process to work, off site well and septic, package treatment plants, and the like cannot be used, all well and septic must be on the lot. In order to accommodate a primary septic field, a reserve septic field, and the minimum separation between well and septic systems required by the Health Department, we concluded that two acres was about the minimum required size. With regard to cluster lots, the minimum lot size of one acre is suggested, because utilization of off site septic (in HOA open space) is permitted.

We note that in the current AR-1 and AR-2 district regulations (as defined in the Revised 1993 Ordinance), there is no minimum lot size for cluster lots. In the Rural Hamlet provisions under A-3 zoning, the minimum size of a hamlet lot was 10,000 square feet (with a three acre maximum). Therefore we are recommending a significant increase in the minimum lot size, although retaining the three acre maximum lot size for cluster lots. We believe that market forces have resulted in hamlet lots at sizes significantly larger than the minimum required lot size, and we therefore do not regard the larger minimum lot sizes as a hardship.

2. Nonconforming Lots. The Zoning Ordinance defines a nonconforming lot as a lot that is less than the minimum lot size in the district. Under A-3 zoning, a nonconforming lot was a lot containing less than 3 acres of land. The only constraint on nonconforming lots is that you cannot create them. Nonconforming lots can be utilized for agricultural uses and homes can be built on them, as long as the setback and other district requirements are met. Since the setbacks currently existing in the AR-1 and AR-2 districts are the same as they were under A-3 zoning, we see no adverse impacts on landowners from nonconforming lots. However, we note that setting a minimum lot size of two acres in the AR-1 and AR-2 districts should further reduce the possibility of problems arising from nonconforming lots.

3. Feasibility and Logistics of “Parent/Child” Lots. We regard the approach taken by the Board on this issue as perfectly feasible, although it will require that when a “parent tract” is subdivided by creating a “spinoff” or “child” lot, the overall density of allowed number of lots must be determined and shown on the record plat, and all subsequent subdivisions of lots out of the Parent tract would have to show a tabulation of the allowed number of lots, the number of lots being created and previously created, and the remaining number of allowed lots that may be created in the future out of such parent tract. We feel that this approach can be readily implemented by Building and Development staff and the surveying/civil engineering professionals, and the attached materials contain suggested ordinance language. We note that in our materials we have called this the “Spinoff Lot” subdivision alternative, because we found the “Parent/Child” nomenclature potentially confusing to the public because it suggested a family subdivision.

4. Use List Review and Recommendations. The attached materials reflect the review requested by the Board of Supervisors. Our Committee has deliberately utilized a “light hand” in reviewing the uses allowed in the AR-1 and AR-2 districts. In other words, we have neither added additional uses or deleted uses currently allowed, although we are recommending changes to certain performance standards. Our “light hand” approach is based on the following:

- We understood the Board’s instruction to be to work within the format of AR-1 and AR-2 use and district regulations, rather than “reinventing the wheel” with a totally new approach.
- The utilization of a fairly expansive use list, with the number of special exception applications kept to a minimum by using performance standards for certain uses, is an approach the County has been using for the past 15 years.
- Given that many landowners have opted in to AR-1 and AR-2, presumably to preserve their right to certain uses in existence or planned, the deletion of uses could create problems. By keeping the use list as close as possible to that which was in effect prior to the Supreme Court decision, it is our hope that we won’t have to have an “old AR-1 and AR-2” and “new AR-1 and AR-2” in the ordinance.

- Our recommendations for performance standard revisions, have, by and large, been to loosen standards that we felt were overly restrictive or unworkable, further increasing the possibility that the County won't have to have two separate sets of AR-1 and AR-2 district regulations. This approach also furthers the Board's direction of minimizing the burden on nonresidential rural economy uses adjacent to existing or future residential uses.

5. Easements on Rural Economy Lots Prohibiting Residential Uses. As we understand this question, the intent seems to be to get our recommendation as to whether additional lots, over and above the base density of lots allowed in the district, can be created if an easement is recorded prohibiting residential uses except as secondary to a rural economy/agriculture use. Our recommendation is that this approach not be utilized, and the attached materials do not contain any provisions to this effect. Our thinking on this is as follows:

- The Board's approach is to set density based on a number of allowed lots, while providing for a wide range of use on such lots, subject to performance standards. The creation of additional lots, ostensibly for uses where residential is "secondary" would be inconsistent with this approach to base density.
- Allowing residences only as secondary uses to rural economy uses or agriculture may sound attractive in the abstract, but the practical result would be confusion among purchasers and landowners who may not understand this distinction.
- If such an easement is placed on the property, what do you do with the "secondary" residence if the landowner decides to change the use of the property or stop engaging in the business that qualified as the "primary" use. We don't regard it as workable to say that the landowner has to tear down the house.
- We believe it would be difficult to obtain financing for construction of either the rural economy use or the residential secondary use in these circumstances.

Other Comments: Rezoning Option. Option 1 contained a proposal that landowners be able to obtain additional density of development on a parcel of land zoned AR-1 or AR-2 by going through a proffered rezoning process, with capital facilities proffers based on the total number of lots, not just on the additional lots derived from a rezoning, with clustering mandatory on the rezoned parcel.

Based on the experiences a number of ZORC members have had with rezoning land for suburban residential development, we are as a Committee somewhat skeptical that landowners and purchasers will find the rezoning process justifiable. In the experience of a number of committee members, the application fees, traffic studies, civil engineering and legal expenses of a rezoning are considerable, and the inevitable requests for transportation improvements, capital facilities proffers, additional buffering/screening and other "voluntary" exactions, and the inherent uncertainties of a public hearing process make a rezoning effort in any part of the County an endeavor not to be entered into lightly.

It may be that the County, in implementing Option 1, can come up with a simplified rezoning approach for AR-1 and AR-2 areas of the County. Because so much of the language for this would have to be in the Comprehensive Plan, and the ordinance for areas rezoned within the AR-1 and AR-2 Districts is dependent on the revisions to the Comprehensive Plan, we have not endeavored to draft zoning ordinance language for the rezoning option.

Other Comments: Boundary Line Adjustments and Temporary Events. We are providing the Board with our suggested revisions to Sections 1-404(CC) Boundary Line Adjustments, and 5-500(CC) Temporary Special Events because in our judgment these suggested revisions should be read in the context of the other ZORC recommendations to the AR-1, AR-2, Cluster, and Performance Standard sections of the Zoning Ordinance. These revisions are based on input from residents, the LCVA, and the REDC, and they tie in to our recommendations regarding subdivision alternatives in the rural districts and to the performance standards for special events contained in Section 5-600.

We recognize that County Staff has also been engaged in reviewing Option 1, and will be submitting proposed ordinance language to the Board in the near future. We hope that the attached materials will be helpful to the Board of Supervisors in completing this important work. We are available to meet with appropriate County personnel to answer any questions that the Board, the Planning Commission, and staff may have.

Our Committee would be extremely remiss if we did not call the Board's attention to the extraordinary level of support we have received from Michael Currie of the Zoning Office, who has attended every meeting, displayed draft materials on the board for review by our Committee and the public, maintained the integrity of revisions to the zoning ordinance, and demonstrated an unsurpassed command of his laptop and the Microsoft Word software. We absolutely would not have been able to complete this task without him.

Respectfully submitted,


FOR THE COMMITTEE

LOUDOUN COUNTY ZONING ORDINANCE TECHNICAL REVIEW COMMITTEE

Robert M. Gordon, Chairman

Pat Quante, Vice Chairman

Ava Abramowitz

Brian J. Cullen

Frank Hyatt

Stevens Miller

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William Soltesz

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